

FILED

OCT 10 2014

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re ) Case No. 12-31671-E-13  
CHRISTIAN LYNN NEWMAN ) Docket Control No. PGM-6  
Debtor. ) DATE: November 18, 2014  
 ) TIME: 3:00 p.m.  
 ) DEPT: E, Courtroom 33  
 ) 501 I Street, 6<sup>th</sup> Floor  
 ) Sacramento, California

SUPPLEMENTAL FINDINGS FOR ORDER TO APPEAR RE:  
PROOFS OF CLAIMS NOS. 9 and 10  
AND  
OBJECTION TO NOTICE OF POST-PETITION MORTGAGE CHANGE

Christian Newman ("Debtor") has filed an Objection to Notice of Post-Petition Mortgage Fees, Expenses and Charges. The court issued Findings of Fact and Conclusions of Law for the Motion for the October 7, 2014 hearing on the Motion. Civil Minutes, October 7, 2014 hearing. The hearing has been continued to 3:00 p.m on November 18, 2014. The court issues these Supplemental Findings and an order for various parties in interest to appear and provide supplemental pleadings necessary to address this Objection.

The title of the Objection to Post-Petition Mortgage Change states that it is an objection to such charges of "US Bank/America's Servicing Company." The court cannot identify any entity with such name that is, or can be, brought before the court. For a federal

AWYS

1 court to exercise federal judicial power, the judge must be confident  
2 that it has before it the real parties in interest for whom there is  
3 an actual case or controversy as required by Article III, Section 2,  
4 of the United States Constitution.

5 Debtor has objected to the Notice of Mortgage Payment Change  
6 which was filed on June 3, 2014. The Notice identifies the creditor  
7 as "America Servicing Company." The last four digits of the Debtor's  
8 account number are 6021. The Uniform Claim Identifier is stated to be  
9 "WFCMGA1231671CAE46306021." The new Principal, Interest, and Escrow  
10 payment is stated to be \$1,601.36. The Notice states that it relates  
11 to Proof of Claim No. 9. June 3, 2014 Docket Entry.

12 A prior Notice of Mortgage Payment was filed on June 7, 2013,  
13 which also states that it relates to Proof of Claim No. 9. The  
14 creditor is stated to be "America Servicing Company." This Notice of  
15 Payment Change identifies the same last four digits for the account  
16 number and references the same Uniform Claim Identifier. This Notice  
17 states that the Principal, Interest, and Escrow payment is \$1,556.37.  
18 June 7, 2014 Docket Entry. On September 25, 2014, a "Notice of  
19 Withdrawal of Notice of Payment Change (Court Claim No. 9)" was filed  
20 for the June 7, 2013 filed notice. This Notice of Withdrawal states  
21 that America's Servicing Company is withdrawing the Notice of Payment  
22 Change. September 25, 2013 Docket Entry.

23 The two Notices of Mortgage Payment Change identify the creditor  
24 as "America Servicing Company." However, the two Notices of Mortgage  
25 Payment Change and the Notice of Withdrawal are signed by  
26 representatives of "America's Servicing Company." [Emphasis Added.]

27 /////

While this is a slight difference, it is a difference.<sup>1</sup>

Debtor asserts that the \$1,601.36 amount in the June 3, 2014 Docket Entry is incorrect.

**PROOFS OF CLAIM FILED IN THIS BANKRUPTCY CASE**

**Proof of Claim No. 9**

Proof of Claim No. 9 in this case was filed by the Debtor on April 25, 2013. It states the following information relating to the claim:

A. Name of Creditor

..... "America Servicing Company"

B. Amount of Debt

..... \$12,000.00

C. Consideration for Debt

..... "Mortgage Arrears"

D. Security Interest is held for Claim

..... No Collateral Identified

---

<sup>1</sup> The court recalls, and is confident that the parties remember, the confusion which was created when an entity was registered to do business in California with the name "Mortgage Electronic Registration System, Inc. (MERs)" which was very similar to the entity "Mortgage Electronic Registration Systems, Inc." which was serving as the nominee for a large number of financial institutions in making residential home loans to consumers. Even small variations in names can make a significant difference in judicial proceeding.

In connection with this matter, an internet search discloses that there is a business operating under the name "Americas Servicing Company." See <http://www.americasservicingcompany.org/about-us/>. On this website it is stated that "Americas Servicing Company" is not "affiliated in any way with America's Servicing Company or Wells Fargo Bank."

E. Notice of Filing to be sent by court to

Chapter 13 Trustee

P.O. Box 1858

Sacramento, CA 95812

America Servicing Company

P.O. Box 14547

Des Moines, IA 50306-4547

Proof of Claim No. 9, Registry of Claims for Case No. 12-31671.

**Proof of Claim No. 10**

On May 20, 2013, less than one month later, a Proof of Claim was filed by U.S. Bank National Association, as trustee for Structured Asset Securities Corporation Mortgage Pass-Through Certificates, Series 2007 EQI ("U.S. Bank, National Association, Trustee"). Proof of Claim No. 10. The elements of Proof of Claim No. 10 are,

A. Name of Creditor

..... U.S. Bank, National Association, Trustee

B. Entity to Receive Payments and Notices

..... "Americas Servicing Company"

C. Person Executing Proof of Claim

..... Attorney for Creditor (agent)

D. Amount of Claim

.....\$256,692.94

E. Amount of Pre-Petition Arrearage

.....\$ 16,393.91

F. Secured Claim, Collateral Identified

..... 30 Cattail Ct

G. Last Four Digits of Account Number

..... None Listed

H. Uniform Claim Identifier

..... None Listed

Attached to Proof of Claim No. 10 is Mortgage Proof of Claim Attachment. The principal and interest on the claim is computed to be \$251,206.78, which breaks down as,

A. Principal.....\$246,003.59

B. Interest.....\$5,203.78

1. 2.000% interest for the period June 1, 2011 through June 21, 2012 (date bankruptcy case was filed).

The attachment computes the pre-petition fees, expenses, and charges to be \$4,291.00, and the pre-petition payment arrearage to be \$12,256.92 (12 monthly payments of \$1,021.41 each).

**First Amended Proof of Claim No. 10 - Filed July 25, 2013**

On July 25, 2013, a First Amended Proof of Claim No. 10 was filed by U.S. Bank, National Association, as Trustee. This amended proof of claim adjusts the claim amount to \$256,278.57 and reduces the pre-petition arrearage to \$15,979.54. Amended Proof of Claim No. 10 adds the following information to this claim:

A. Last Four Digits of Account Number..... 6021

B. Uniform Claim Identifier..... WFCMGA1241671CAE46306021

**Second Amended Proof of Claim No. 10 - Filed June 9, 2014**

On June 9, 2014, U.S. Bank, National Association, as Trustee, filed a Second Amended Proof of Claim No. 10. In this amended proof of claim,

1 the amount of the claim was changed to be \$252,865.81 and the pre-  
 2 petition arrearage was reduced to \$14,424.54.

3 Attached to Second Amended Proof of Claim No. 10 is Mortgage Proof  
 4 of Claim Attachment. The principal and interest on the claim is computed  
 5 to be \$250,154.07, which breaks down as,

6 a. Principal.....\$244,972.71

7 b. Interest.....\$ 5,181.36

8 i. 2.000% interest for the period June 1, 2011 through June  
 9 21, 2012 (date bankruptcy case was filed).

10 The attachment computes the pre-petition fees, expenses, and charges  
 11 to be \$3,868.31, and the pre-petition payment arrearage to be \$12,256.92  
 12 (12 monthly payments of \$1,021.41 each).

#### 13 **IDENTITY OF CREDITOR AND VALID CLAIM**

14 In this case, the court is concerned that the parties have failed  
 15 to properly identify the creditor which has a claim secured by the 30  
 16 Cattail Ct. property and the claim which is secured. The "confusion"  
 17 begins with the filing of Proof of Claim No. 9, which states that there  
 18 is only a \$12,000.00 claim, for which America Servicing Company is the  
 19 creditor, and it is secured by an unidentified assets. America's  
 20 Servicing Company, on two separate occasions, has confirmed that the  
 21 creditor is "America Servicing Company" and that Proof of Claim No. 9 is  
 22 the correct claim. Further, that this claim is the one for which the  
 23 Last Four Digits of the Account Number is 6021 and the Uniform Claim  
 24 Identifier is WFCMGA1241671CAE46306021. Notices of Mortgage Payment  
 25 Change, June 7, 2013 and June 3, 2014 Docket Entries.

26 Conflicting with this is Proof of Claim No. 10, as amended, which  
 27 states that U.S. Bank, N.A., as Trustee, is the creditor. The Last Four  
 28

1 Digits of the Account Number and the Uniform Claim Identifier for Proof  
2 of Claim No. 10 is the same as that stated to be the basis for the claim  
3 of "America Servicing Company" as stated in Proof of Claim No. 9 and the  
4 two Notices of Mortgage Payment Changes.

5 From the various documents filed the creditor is asserted to be  
6 "America Servicing Company" (by Debtors and America's Servicing Company),  
7 "America's Servicing Company," or U.S. Bank, N.A., Trustee.

8 Then, there is confusion over whether the secured claim in this case  
9 is \$12,000.00 or \$252,865.81. While Proof of Claim No. 9 appears  
10 incomplete, on several occasions America's Servicing Company has directed  
11 the court to that Proof of Claim as the one to which the post-petition  
12 mortgage payments relate.

13 Finally, there is an issue as to what changes, if any, are properly  
14 made for the current monthly payment for the secured claim. The court's  
15 records show that only the secured claim evidenced by Proof of Claim No.  
16 9 is the one for which there is a post-petition change in the amount of  
17 the monthly payment. No Notice of Mortgage Payment Change has been filed  
18 which relates to Proof of Claim No. 10.

19 **FURTHER HEARING, BRIEFING, AND APPEARANCE OF PARTIES**

20 The court has determined that it is necessary and proper to have  
21 each of these three parties - the Debtor, U.S. Bank, N.A., as Trustee,  
22 and America's Servicing Company - come forward and clarify for the court,  
23 Chapter 13 Trustee, U.S. Trustee, and other parties in interest the  
24 correct identity of the creditor and whether Proof of Claim No. 9, as  
25 advanced by Debtors and America's Servicing Company, is the correct claim  
26 to be paid in this case or, if it is Proof of Claim No. 10, for which  
27 U.S. Bank, N.A., as Trustee, is the creditor. Though one may intuit the  
28

1 correct answer, parties have made conflicting statements under penalty  
2 of perjury and subject to Federal Rule of Bankruptcy Procedure 9011.

3 The court orders the following parties to respond to the court and  
4 appear at the continue hearing on this Objection:

5 **U.S. Bank, National Trust Association, as Trustee for Structured Asset**  
6 **Security Corporation Mortgage Pass-Through Certificates, Series 2007-EQ1:**

7 A. U.S. Bank, N.A., as Trustee, through an officer familiar  
8 with the claim asserted for it in this case, shall appear,  
9 and,

10 1. Confirm whether the Bank, as Trustee, is the creditor in  
11 this case for the claim identified in Proof of Claim No.  
12 10, as amended.

13 2. State whether the Bank, as Trustee, has transferred its  
14 claim to "America Servicing Company." If transferred,  
15 provide documentation of the transfer.

16 3. State whether the Bank, as Trustee, if a creditor in  
17 this case, authorized "America Servicing Company," or  
18 any other person, to represent that it was the creditor  
19 for the obligation which is the subject of Proof of  
20 Claim No. 10, as amended, and hide the identity of U.S.  
21 Bank, National Association, as Trustee, as the true  
22 creditor in this case.

23 4. Whether Proof of Claim No. 10 or Proof of Claim No. 9 is  
24 the corrected secured claim for the debt upon which  
25 Proof of Claim No. 10 is based.

26 B. Provide a written analysis of the computation of its claim,  
27 the current mortgage payment, and the correct computation of  
28



principal, interest, and any escrow payments for the debt which is the subject of Proof of Claim No. 10, as amended.

**Wells Fargo Bank, N.A. and America's Servicing Company:**

A. Whether Wells Fargo Bank, N.A. does business as America's Servicing Company, whether America's Servicing Company is a fictitious name by which Wells Fargo Bank, N.A. does business, and where in the documents and pleadings filed with the court is the identify of America's Servicing Company as Wells Fargo Bank, N.A. disclosed to the court and parties in interest.

B. How the court, Debtor, Chapter 13 Trustee, U.S. Trustee, or other parties in interest identify America's Servicing Company and how federal court jurisdiction is exercised (proper service of process) over the America's Servicing Company appearing in this case (such as Secretary of State registration, FDIC data base, etc.).

C. America's Servicing Company, or Wells Fargo Bank, N.A. if it is operating under that name, through an officer familiar with the claim asserted for it in this case, shall appear, and,

1. State whether America's Servicing Company asserts that it is a creditor in this case or if it is a servicing company for a creditor in this case.

2. If America's Servicing Company asserts that it is a creditor, provide competent, credible, and admissible evidence of such status in this bankruptcy case.

3. If America's Servicing Company asserts that it is the

servicing agent for the creditor, identify the creditor.

4. Explain why Notices of Mortgage Payment Changes filed on June 3, 2014 and June 7, 2013 were filed by America's Servicing Company in this case which (1) identify the creditor as "America Servicing Company" and (2) why the Notice of Mortgage Payment Changes are for Proof of Claim No. 9, a secured claim for only \$12,000.00.

5. State the computation of the claim, whether it is the creditor or it is the servicing agent for the creditor, the current mortgage payment, the correct computation of principal, interest, and any escrow payments for the debt which is the subject of Proof of Claim No. 9 and Proof of Claim No. 10, as amended.

**Christian Lynn Newman, Debtor:**

A. State whether Proof of Claim No. 9 accurately states the claim of "America Servicing Company," and whether America Servicing Company has a secured claim of only \$12,000.00 in this case.

B. State the basis for identifying "America Servicing Company" as the creditor having a \$12,000.00 secured claim in this case, the basis of the obligation, and the collateral which secures the claim, and provide copies of the Note, Deed of Trust, and other documents evidencing the obligation and collateral.

C. State the computation, according to the Debtor, of Proof of Claim No. 9 and Proof of Claim No. 10, the current mortgage

1 payment, the correct computation of principal, interest, and  
2 any escrow payments for the debt which is the subject of  
3 Proof of Claim No. 10, as amended.

4 For each of these parties ordered to provide the above information  
5 and documentation, they shall clearly show the basis for how they compute  
6 the principal and interest, which shall include how the debt is computed  
7 based on the Note, and any modifications thereto, and any additional  
8 amounts asserted to be owed pursuant to specific provisions of the Note  
9 and the Deed of Trust which secures the Note.

10 Each of the above parties shall provide written responses, supported  
11 by competent, credible, and properly authenticated evidence, which shall  
12 be filed and served on the other parties named above, the Chapter 13  
13 Trustee, and the U.S. Trustee, Sacramento Division, on or before October  
14 24, 2014. Replies, if any, shall be filed and served on or before  
15 November 3, 2014.

16 The continued hearing on this Motion shall be conducted at 3:00 p.m.  
17 on November 18, 2014.

18 The Clerk of the Court shall serve a copy of this order on the  
19 following parties and persons:

20 Office of the U.S. Trustee  
21 Region 17, Sacramento Division

22 Peter Macaluso, Esq.  
23 7311 Greenhaven Dr. #100  
24 Sacramento, CA 95831

25 Christian Lynn Newman  
26 30 Cattail Ct  
27 Sacramento CA 95833

28 U.S. Bank, National Trust Association, Trustee  
**Attn: Officer for Service of Process**  
425 Walnut Street  
Cincinnati, Ohio 45202

1 Kelly M. Raftery, Esq.  
McCarthy & Holthus, LLP

2 **Attn. Attys. For:** U.S. Bank, National Association, Trustee  
1770 Fourth Avenue  
3 San Diego, CA 92101

4 America's Servicing Company  
McCarthy & Holthus, LLP

5 **Attn. Attys. For:** America's Servicing Company  
1770 Fourth Avenue  
6 San Diego, CA 92101

7 Wells Fargo Bank, N.A.

America's Servicing Company

8 **c/o CSC-Lawyers Incorporating Service - Service of Process**  
2710 Gateway Oaks Dr. Ste 150N  
9 Sacramento, CA 95833

10 Wells Fargo Bank, N.A.

America's Servicing Company

11 **Attn: Officer for Service of Process**

101 N. Phillips Avenue

12 Sioux Falls, SD 57104

13 Austin P. Nagel, Esq.

(Courtesy Copy)

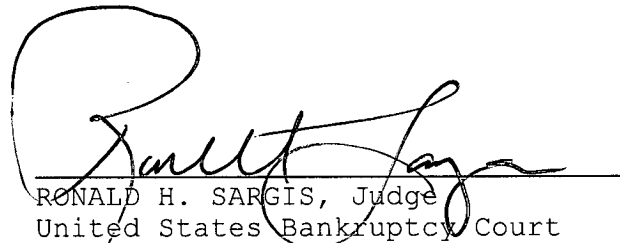
14 111 Deerwood Rd, Ste. 305

15 San Ramon, CA 94538

16 The Court shall issue a separate order consistent with this Decision.

17 Dated: October 10, 2014

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28



RONALD H. SARGIS, Judge  
United States Bankruptcy Court